

REPORT DOCUMENTATION PAGE			
1. AGENCY USE ONLY (leave blank)		2. REPORT DATE April 16, 1997	3. REPORT TYPE & DATE COVERED <u>Change 1 to DoD Instruction 1205.12</u>
4. TITLE & SUBTITLE Civilian Employment and Reemployment Rights of Applicants for, and Service Members and Former Service Members of the Uniformed Services		5. FUNDING NUMBERS	
6. AUTHOR(S) J. Drew			
7. PERFORMING ORGANIZATION NAME(S) & ADDRESS(ES) Assistant Secretary of Defense for Reserve Affairs Washington, DC 20301		8. PERFORMING ORGANIZATION REPORT NUMBERS	
9. SPONSORING/MONITORING AGENCY NAME(S) & ADDRESS(ES)		10. SPONSORING/MONITORING AGENCY REPORT NUMBERS	
11. SUPPLEMENTARY NOTES The DTIC accession number for the basic Instruction is ADA-311153.			
12a. DISTRIBUTION/AVAILABILITY STATEMENT Unclassified, Release unlimited.		12b. DISTRIBUTION CODE	
13. ABSTRACT (Maximum 200 Words) This Change 1 to DoD Instruction 1205.12, "Civilian Employment and Reemployment Rights of Applicants for, and Service Members and Former Service Members of the Uniformed Services," April 4, 1996, is provided to DTIC.			
14. SUBJECT TERMS <big>19970528 085</big>		15. NUMBER OF PAGES 5 pages	
16. PRICE CODE			
17. SECURITY CLASSIFICATION OF REPORT Unclassified	18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified	19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified	20. LIMITATION OF ABSTRACT

**DEPARTMENT OF DEFENSE
DIRECTIVES SYSTEM TRANSMITTAL**

NUMBER 1205.12, Change 1	DATE April 16, 1997	DISTRIBUTION 1000 Series
ATTACHMENTS 4 Pages		

INSTRUCTIONS FOR RECIPIENTS

The following page and pen changes to DoD Instruction 1205.12, "Civilian Employment and Reemployment Rights of Applicants for, and Service Members and Former Service Members of the Uniformed Services," April 4, 1996, are authorized:

PAGE CHANGES

Remove: Pages 5, 6, 2-3, and 2-4

Insert: Attached replacement pages

PEN CHANGES

Page 7

Renumber subsections "F.13. and F.14." to "F.14. and F.15."

Changes appear on pages 5, 6, and 2-3 and are indicated by marginal asterisks.

EFFECTIVE DATE

The above changes are effective immediately.



Larry E. Curny, Director
Correspondence and Directives

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

(7) Who they may contact to obtain assistance with employment and reemployment questions and problems.

2. Inform Service members who are covered by the provisions of Chapter 43 of 38 U.S.C. (reference (b)), upon completion of an extended period of active duty and before separation from active duty of their employment and reemployment rights, benefits, and obligations as provided under reference (b). This shall, as a minimum, include notification and reporting requirements for returning to employment with their civilian employer. While enclosure 2 provides the necessary information to satisfy this requirement, other appropriate materials may be used to supplement this information.

3. Issue orders that span the entire period of service when ordering a member of the National Guard or Reserve to active duty for a mission or requirement. Order modifications shall be initiated, as required, to ensure continuous active duty should the period required to complete the mission or requirement change.

4. Document the length of a Service member's initial period of military service obligation performed on active duty.

5. Determine and certify in writing those additional training requirements not already exempt for the 5-year cumulative service limit which are necessary for the professional development, or skill training or retraining for members of the National Guard or Reserve. Once the Secretary concerned certifies those training requirements, performance of uniformed service to complete a certified training requirement is exempt from the 5-year cumulative service limit.

- * 6. Determine those periods of active duty when a Service member is ordered to, or retained on, active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or Congress. If the purpose of the order to, or retention on, active duty is for the direct or indirect support of the war or national emergency, then the orders of the Service member should be so annotated, since that period of service is exempt from the 5-year cumulative service limit established in reference (b). *
- * 7. Determine those periods of active duty performed by a member of the National Guard or Reserve that are designated by the Secretary concerned as a critical mission or critical requirement, and for that reason are exempt from the 5-year cumulative service limit. The authority for determining what constitutes a critical mission or requirement shall not be delegated below the Assistant Secretary level or the Commandant of the Coast Guard. The designation of a critical requirement to gain the necessary experience to qualify for key senior leadership positions shall be used judiciously, and the necessary experience and projected key leadership positions fully documented. This authority shall not be used to grant exemptions to avoid the cumulative 5-year service limit established by reference (b) or to extend individuals in repeated statutory tours. The Assistant Secretary of Defense for Reserve Affairs shall be notified in writing of all occasions in which a Service member is granted more than one exemption for a critical requirement when the additional exemption(s) extend the Service member beyond the 5-year cumulative service limit established in reference (b). *
- * 8. When appropriate, ensure that orders to active duty or orders retaining members on active duty specify the statutory or Secretarial authority for those orders when such authority meets one or more of the exemptions from the 5-year cumulative service limit provided in reference (b). If *

circumstances arise that prevent placing this authority on the orders, the authority shall be included in a separation document and retained in the Service member's personnel file.

- * 9. Ensure that appropriate documents verifying any period of service exempt from the 5-year cumulative service limit are placed in the Service member's personnel record or other appropriate record. *
- * 10. Document those circumstances that prevent a Service member from providing advance notification of uniformed service to a civilian employer because of military necessity or when advance notification is otherwise impossible or unreasonable, as defined in enclosure 1. *
- * 11. Designate those officers, as defined in paragraph 7 of enclosure (1), below, who are authorized by the Secretary concerned to provide advance notification of service to a civilian employer on behalf of a Service member or applicant for uniformed service. *
- * 12. Provide documentation, upon request from a Service member or former Service member, that may be used to satisfy the Service member's entitlement to statutory reemployment rights and benefits. Appropriate documentation may include, as necessary:
 - a. The inclusive dates of the initial period of military service obligation performed on active duty.
 - b. Any period of service during which a Service member was required to serve because he or she was unable to obtain a release from active duty through no fault of the Service member.
 - c. The cumulative length of all periods of active duty performed.
 - d. The authority under which a Service member was ordered to active duty when such service was exempt from the 5-year cumulative service limit.
 - e. The date the Service member was last released from active duty, active duty for special work, initial active duty for training, active duty for training, inactive duty training, annual training or full-time National Guard duty. This documentation establishes the timeliness of reporting to, or submitting application to return to, a position of civilian employment.
 - f. Whether service requirements prevent providing a civilian employer with advance notification of pending service.
 - g. That the Service member's entitlement to reemployment benefits has not been terminated because of the character of service as provided in Section 4304 of 38 U.S.C. (reference (b)).
 - h. When appropriate, a statement that sufficient documentation does not exist.
- * 13. Establish a central point of contact at a headquarters or regional command who can render assistance to active duty Service members and applicants for uniformed service about employment and reemployment rights, benefits and obligations. *

membership, application for membership, performance of service, application for service or obligation.

C. **EXCEPTIONS TO THE MAXIMUM PERIOD OF SERVICE FOR COVERAGE**. In order to retain reemployment rights and benefits provided by Chapter 43 of 38 U.S.C. (reference (b)), the cumulative length of absences from the same employer cannot exceed 5 years. Not counted toward this limit is:

1. Service beyond 5 years if required to complete an initial service obligation;
2. Service during which an individual was unable to obtain release orders before the expiration of the 5-year cumulative service limit through no fault of his or her own;
3. Inactive duty training; annual training; ordered to active duty for unsatisfactory participation; active duty by National Guardsmen for encampments, maneuvers, field operations or coastal defense; or to fulfill additional training requirements, as determined by the Secretary concerned, for professional skill development, or to complete skill training or retraining;
4. Involuntary order or call to active duty, or retention on active duty;

* 5. Service resulting from an order to, or retention on, active duty (other than for training) *
* under any provision of law because of a war or national emergency declared by the President or *
* Congress, as determined by the Secretary concerned; *

6. Ordered to active duty in support of an operational mission for which personnel have been involuntarily called to active duty;
7. Performing service in support of a critical mission or requirement, as determined by the Secretary concerned;
8. Performing service in the National Guard when ordered to active duty by the President to suppress an insurrection or rebellion, repel an invasion, or execute laws of the United States; and,
9. Voluntary recall to active duty of retired regular Coast Guard officers or retired enlisted Coast Guard members.

D. **APPLICATIONS FOR REEMPLOYMENT**

1. For service of 30 days or less, or for an absence for an examination to determine the individual's fitness to perform uniformed service, the Service member or applicant must report to work not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of service or the examination, after allowing for an eight hour rest period following safe transportation to his or her residence.
2. For service of 31 days or more but less than 181 days, the Service member must submit application for reemployment not later than 14 days after completion of service, or by the next

full calendar day when submitting an application within the 14 day limit was impossible or unreasonable through no fault of the Service member.

3. For service of 181 days or more, the Service member must submit an application for reemployment not later than 90 days after the completion of service.

4. If hospitalized or convalescing from an illness or injury incurred or aggravated during service, the Service member must, at the end of the period necessary for recovery, follow the same procedures, based on length of service, as described in subsections D.1. through D.3., above. The period of hospitalization or convalescence may not normally exceed 2 years.

5. Anyone who fails to report or apply for reemployment within the specified period shall not automatically forfeit entitlement to reemployment rights and benefits, but is subject to the rules of conduct, established policies, and general practices of the employer pertaining to explanations and discipline because of an absence from scheduled work.

E. DOCUMENTATION UPON RETURN

1. If service is for 31 days or more, a Service member must provide documentation, upon request from the employer, that establishes:

- a. He or she made application to return to work within the prescribed time period;
- b. He or she has not exceeded the 5-year cumulative service limit; and
- c. His or her reemployment rights were not terminated because of character of service as described in paragraphs A.2.d. and e., above.

2. Failure to provide documentation cannot serve as a basis for denying reemployment to the Service member, former Service member, or applicant if documentation does not exist or is not readily available at the time of the employer's request. However, if after reemployment, documentation becomes available that establishes that the Service member or former Service member does not meet one or more of the requirements contained in subsection E.1., above, the employer may immediately terminate the employment.

F. POSITION TO WHICH ENTITLED UPON REEMPLOYMENT

1. Reemployment position for service of 90 days or less:

- a. The position the person would have attained if continuously employed (the "escalator" position) and if qualified to perform the duties; or,
- b. The position in which the person was employed in when he or she departed for uniformed service, but only if the person is not qualified to perform the duties of the escalator position, despite the employer's reasonable efforts to qualify the person for the escalator position.